

Information Commissioner's Office

Call for evidence:

Age Appropriate Design Code

Start date: 27 June 2018
End date: 19 September 2018

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Information Commissioner's Office

Introduction

The Information Commissioner (the Commissioner) is calling for evidence and views on the Age Appropriate Design Code (the Code).

The Code is a requirement of the Data Protection Act 2018 (the Act). The Act supports and supplements the implementation of the EU General Data Protection Regulation (the GDPR).

The Code will provide guidance on the design standards that the Commissioner will expect providers of online 'Information Society Services' (ISS), which process personal data and are likely to be accessed by children, to meet. Once it has been published, the Commissioner will be required to take account of any provisions of the Code she considers to be relevant when exercising her regulatory functions. The courts and tribunals will also be required to take account of any provisions they consider to be relevant in proceedings brought before them. The Code may be submitted as evidence in court proceedings.

Further guidance on how the GDPR applies to children's personal data can be found in our guidance [Children and the GDPR](#). It will be useful to read this before responding to the call for evidence, to understand what is already required by the GDPR and what the ICO currently recommends as best practice. In drafting the Code the ICO may consider suggestions that reinforce the specific requirements of the GDPR, or its overarching requirement that children merit special protection, but will disregard any suggestions that fall below this standard.

The Commissioner will be responsible for drafting the Code. The Act provides that the Commissioner must consult with relevant stakeholders when preparing the Code, and submit it to the Secretary of State for Parliamentary approval within 18 months of 25 May 2018. She will publish the Code once it has been approved by Parliament.

This call for evidence is the first stage of the consultation process. The Commissioner seeks evidence and views on the development stages of childhood and age-appropriate design standards for ISS. The Commissioner is particularly interested in evidence based submissions provided by: bodies representing the views of children or parents; child development experts; providers of online services likely to be accessed by children, and trade associations representing such providers. She appreciates that different stakeholders will have different and particular areas of expertise. The Commissioner welcomes responses that are limited to specific areas of interest or expertise and only address questions within these areas, as well as those that address every question

asked. She is not seeking submissions from individual children or parents in this call for evidence as she intends to engage with these stakeholder groups via other dedicated and specifically tailored means.

The Commissioner will use the evidence gathered to inform further work in developing the content of the Code.

The scope of the Code

The Act affords the Commissioner discretion to set such standards of age appropriate design as she considers to be desirable, having regard to the best interests of children, and to provide such guidance as she considers appropriate.

In exercising this discretion the Act requires the Commissioner to have regard to the fact that children have different needs at different ages, and to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

During Parliamentary debate the Government committed to supporting the Commissioner in her development of the Code by providing her with a list of 'minimum standards to be taken into account when designing it.' The Commissioner will have regard to this list both in this call for evidence, and when exercising her discretion to develop such standards as she considers to be desirable

In developing the Code the Commissioner will also take into account that the scope and purpose of the Act, and her role in this respect, is limited to making provision for the processing of personal data.

Responses to this call for evidence must be submitted by 19 September 2018. You can submit your response in one of the following ways:

Online

Download this document and email to:
childrenandtheGDPR@ICO.org.uk

Print off this document and post to:
Age Appropriate Design Code call for evidence
Engagement Department
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire SK9 5AF

If you would like further information on the call for evidence please telephone 0303 123 1113 and ask to speak to the Engagement Department about the Age Appropriate Design Code or email childrenandtheGDPR@ICO.org.uk

Privacy statement

For this call for evidence we will publish responses received from organisations but will remove any personal data before publication. We will not publish responses from individuals. For more information about what we do with personal data please see our [privacy notice](#).

Section 1: Your views and evidence

Please provide us with your views and evidence in the following areas:

Development needs of children at different ages

The Act requires the Commissioner to take account of the development needs of children at different ages when drafting the Code.

The Commissioner proposes to use their age ranges set out in the report Digital Childhood – addressing childhood development milestones in the Digital Environment as a starting point in this respect. This report draws upon a number of sources including findings of the United Kingdom Council for Child Internet Safety (UKCCIS) Evidence Group in its literature review of Children's online activities risks and safety.

The proposed age ranges are as follows:

3-5
6-9
10-12
13-15
16-17

Q1. In terms of setting design standards for the processing of children's personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

Not at all appropriate
Not really appropriate
Quite appropriate
Very appropriate

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children's personal data by providers of ISS (online services),

Q2. Please provide any views or evidence you have on children's development needs, in an online context in each or any of the above age brackets.

Children are now used to the digital world from birth, and will never know a world without an online life. Their parents are instrumental in helping them to understand and safely navigate the online world, and we know that being equipped to fulfil this duty is an area of concern for many parents.

In our Annual Parent Survey 2016, 90% told us that it is very or somewhat important that their child's school delivers good quality education or support around cyber-bullying. 88% said the same for emotional health, which is needed when navigating the online world and understanding how to safely manage social media and other online interactions, as well as those in the real world. In an earlier survey in 2016 of 627 parents, 85% told us they had concerns about cyber-bullying, which suggests that the issue remains prevalent for parents over recent time. Our Annual Parent Survey 2016 also revealed that 78% of parents consider it very or somewhat important that their child's school delivers good quality sex education, with 46% of C2DE parents saying it is 'very important' to them compared to 41% of ABC1 parents. This suggests that parents from lower socio-economic backgrounds have greater concern that their child receives good quality sex education compared to their peers on higher incomes.

Over 300 parents responded to a January 2018 survey we ran which informed our response to the Department for Education's consultation on Relationships Education and Relationships and Sex Education (RE/RSE). Overall, we found that issues around online safety topped their concerns. Within the catchall subject of online safety, social media (mentioned by 30 parents) was by far the biggest specific concern. Some parents suggested greater responsibility should be placed on social media companies to ensure the online safety of children. There were concerns arising from the risks associated with sharing data or personal information. Areas such as sexting and pornography became more prevalent the older the parent's child becomes as they grow into sexual maturity between 11 and 17.

Only 25% of parents agreed or strongly agreed that pupils are getting the information they need to thrive and stay safe in the modern world, which indicated that parents would endorse further initiatives to protect children online and keep their data private.

22% of parents told us that their child had a negative experience of social media. Whilst peer-to-peer interactions may be outside of the remit of the consultation, it should be considered relevant because a child's worldview can magnify the significance of interactions, online or otherwise, leaving them more vulnerable than adults and more easily persuadable, especially to harmful experiences such as becoming a target for grooming.

The vital importance of the issue among parents is illustrated in the fact that 92% had talked about online safety with their child, but out of the same sample, only 45% felt that their child is equipped with enough knowledge to stay safe online. This is indicative that while almost all parents feel that online safety knowledge and skills are of critical importance to their child's wellbeing, they do not think that they and/or schools are able to provide children with all the skills they need to stay safe online. There is a role for schools to play in this: 88% and 96% of parents agreed that age-appropriate RE/RSE (updated to include the digital world) should be taught in primary and secondary schools respectively, showing that parents recognise the value and importance of it, but as only 7% think sex education doesn't need updating, parents are concerned that the current teaching of sex education at school does not take the digital world sufficiently into account. The 8% increase in the same parents who think RSE should be taught in secondary compared to RE in primary schools shows that parents consider that online safety issues become more pressing the older the child is, once they reach secondary school and adolescence. As children can give consent to the processing of their data online at the age of 13, this Rubicon is reached part-way through their secondary school years, and at a time when parents are the overall decision-makers on behalf of their child, and will be for the next five years before their child becomes an adult at 18. Despite largely trusting schools to teach their child the necessary skills to safely use digital platforms, parents also believe they have a strong role to play. 77% believe that informing children about sexual health and relationships is primarily the responsibility of schools and parents working in partnership, with only 22% suggesting parents alone, and less than 1% schools alone.

Consideration should also be taken on the effect of children's screen time on their learning and social interactions at home, where they spend most of their time. Many parents set boundaries and time restraints on their child's screen time in an effort to provide a balance between their child's online / real-life interactions. More research needs to be done on the impact of growing up accepting an online life as normal. Xennials (people born in the late 1970s/early 1980s) who are parents will have the most nuanced insight into this, because they are the last generation to complete childhood prior to the digital age, but were young enough to embrace the internet and its impact on society when it came along. They are in a unique position to assist corporations, government, tech companies and others with parental guidance.

It is therefore necessary to work with parents, who are ultimately responsible for their child, in helping them to understand the implications of their child consenting to allow their data to be processed, so that they can fully grasp the best ways they can support their child in navigating the digital world safely.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children's personal data by providers of ISS (online services)

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,
- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

The language used in any explanatory guidance should, as well as being accessible to the children it protects, be accessible to their parents, who should be able to readily reference the Code in the interests of supporting their child in navigating the digital world. Consideration should be given

that not all parents are highly literate, and English may not be their first language. It is important to provide as many parents as possible with access to the Code and supporting guidance/resources to help them understand it, making the plainly-written literature available in different languages. Use of multimedia formats, including infographics and videos, should also be considered. It would be a good idea to “road test” any guidance among parents, by using parent focus groups, for example. We would be happy to support the ICO with any initiatives to consult parents on guidance for the Age Appropriate Design Code.

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children’s personal data by providers of ISS (online services), in each or any of the above areas.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

Q5C. about what design standards might be appropriate (ie where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

Q5D. examples of ISS design you consider to be good practice.

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

The opinion of parents should be sought before and after introducing the Code, to see if they find it useful and if they feel it fulfils its purpose of safeguarding their child throughout their time online. Surveying the opinion of parent and child within the same family may give a rounded view of whether or not the Code is accessible and understandable to its intended audience. Parentkind is happy to assist the ICO with consulting parents.

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name [REDACTED]

Email [REDACTED]

Brief summary of what you think you could offer: Parentkind acts as a voice for parents in education in England, Wales and Northern Ireland. We can access a large sample of parents to gather their opinions on this important subject and provide parental views of statistical significance to the Commission.

Further views and evidence

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

Section 2: About you

Are you:

| | |
|--|-------------------------------------|
| A body representing the views or interests of children? Please specify: | <input type="checkbox"/> |
| A body representing the views or interests of parents? Please specify: Parentkind, a charity that champions the role of parents in education, and acts as a membership body for parent groups in schools such as PTAs and Parent Councils. | <input checked="" type="checkbox"/> |
| A child development expert? Please specify: | <input type="checkbox"/> |
| A provider of ISS likely to be accessed by children? Please specify: | <input type="checkbox"/> |
| A trade association representing ISS providers? Please specify: | <input type="checkbox"/> |
| An ICO employee? | <input type="checkbox"/> |
| Other? Please specify: | <input type="checkbox"/> |

Thank you for responding to this call for evidence.

We value your input.